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of 1001

IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH AT BILASPUR

W.P.NO. 339 OF 2002

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

PETITIONER : I.H. Khan S/o Shri I.H. Khan aged about 55 years, resident of Pharagaon, Tahsil-Kondagaon, Dist – Jagdalpur (C.G.)

P. R. No. 216/03
Presented by Shri M.K.Sinha
dated 20.01.03

Versus

RESPONDENTS : 1) Union of India acting through secretary, Department of forest and Environment, Govt. of India, New Delhi

: 2) State of Chhattisgarh acting through Principal Secretary, Forest Department, Govt. of Chhattisgarh, Raipur.

: 3) The Principal Chief Conservator of Forest, Govt. of Chhattisgarh, Raipur.

: 4) K.M. Johari, Conservator, office of Principal Chief Conservator of Forest, Raipur.

: 5) R.N. Mishra, Additional Principal Chief Conservator of Forest, Raipur.

: 6) A.H.K. Minj, Conservator of forest, Durg.

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRIT/WRITS, DIRECTION/ DIRECTIONS, ORDER/ ORDERS AGAINST THE RESPONDENTS.

(69)

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.329 of 2003

I.H. Khan

- Versus -

Union of India and others

POST FOR ORDER ON *26th APRIL, 2004*

Sd/-
L.C. Bhadoo
Judge

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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.329 of 2003

I.H. Khan

- Versus -

Union of India and others

Present: -

Mr. K.A. Ansari, Advocate:	For the petitioner
Mr. Vinay Harit, Senior Central Govt. Standing Counsel:	For Union of India/respondent No.1
Mr. Shashank Dubey, Deputy A.G.:	For the State/respondents 2 & 3
Mr. Abhishek Sinha, Advocate:	For respondents 4 & 5

Before: Hon'ble Shri Justice L.C. Bhadoo

ORDER

(Passed on 26th April, 2004)

1. By this writ petition under Article 226 of the Constitution of India, the petitioner has challenged the decision of respondent No.3 to initiate departmental enquiry (Annexure P-9) against him under the Chhattisgarh Civil Service (Classification, Control and Appeal) Rules, 1966 (for short 'the Rules'), and also for quashment of the charge sheet dated 28.01.2003, show cause notice Annexure P-32B, and the punishment order dated 08.05.2003 Annexure P-32D, whereby the Principal Chief Conservator of Forests had passed an order for recovery of 60% amount of Rs.1,90,458-35 ps. i.e. Rs.1,14,275/- at the rate of Rs.3,500/- per month and also imposed the penalty of withholding one increment without cumulative effect. It has further been prayed that a direction be issued to respondent No.2 for awarding Selection grade to the petitioner with effect from 01.01.2002 and further to award compensation of Rs.5,00,000/- against respondents 3, 4 and 5. Initially, the writ petition was filed against the decision for initiation of departmental enquiry against the petitioner. However, during the pendency of this writ petition, the enquiry has been concluded and the petitioner has been punished with recovery of amount and withholding of one grade increment without cumulative effect as mentioned above.

2. The petitioner's case is that he joined the Department of Forest in the erstwhile State of Madhya Pradesh as Range Officer and thereafter, he was promoted as Assistant Conservator of Forests by order dated 17.08.1987. The petitioner is working in the Senior Grade, as there are three grades in the post of Assistant Conservator of Forests namely, Junior, Senior and Selection Grades as per the orders of the Principal Chief Conservator of Forests dated 31.08.2000. In the year 1987, the petitioner was posted as Range Officer, Balod, District: Durg, and at that time, a scheme was introduced by the State Government namely, Rural Employment Guarantee Programme, under which certain works were allotted to the Department of Forest under the orders of the Collector, Durg. Under this scheme, 1/3rd of the remuneration was to be paid in cash and the remaining 2/3rd was to be paid in the form of food grains and the funds for food grains were to be received by the Range Officers through the Divisional Forest Officers. The District Development Officer, Durg, was the in charge of all such works. The accounts with vouchers of such works were submitted to the D.F.O., Durg, through the Sub Divisional Officer (Forest), Durg. In the month of July, 1987, Mr. K.K. Dubey, the then S.D.O. (Forest), Durg, raised certain objections to the accounts and vouchers on the ground that the vouchers were false, whereas, the above objections were raised without inspecting the work and the same were baseless as taken only on the basis of the statements of labourers shown to be recorded by S.D.O. Mr. K.K. Dubey and ultimately, proposed rejection of those vouchers and recovery of the amount under report Annexure P-4. These vouchers were disallowed after seeking the explanation of Deputy Ranger and Work-in-charge Mr. J.P. Thakur who made the payment against those vouchers amounting to Rs.1,81,790/-, but the petitioner's explanation was never sought and no query was made from the petitioner. However, in the month of July, 1989, the Divisional Forest Officer, Durg, asked the then S.D.O. (Forest) for making an enquiry into the objections raised by Mr. K.K. Dubey, but the S.D.O. vide his letter dated 17.07.1989 showed his inability to enquire into such vouchers on the ground that earlier enquiry was conducted by the Officer of his rank, and therefore, suggested that it should be conducted by a senior rank officer.

3. Further case of the petitioner is that till 1997, no enquiry was instituted. However, all of a sudden on 27.06.1997, Mr. P.C. Pandey, the then Divisional Forest Officer, Durg, ordered for recovery of 60% amount i.e.

Rs.41,634-24 ps. from the petitioner and remaining 40% from Mr. J.P. Thakur, the then Deputy Range Officer. This order was passed against the petitioner without seeking any explanation and without proper enquiry. Therefore, the petitioner challenged the above order before the State Administrative Tribunal and the Tribunal had set aside the order of the D.F.O. vide order dated 19.04.2000. However, while passing the order, the State Administrative Tribunal observed that since the enquiry was not conducted in accordance with the provisions of the Rules, therefore, if any administrative exigency exists, then the enquiry could be initiated as per the Rules. Even though in the order dated 27.06.1997 (Annexure P-6) it was clearly mentioned by Mr. P.C. Pandey, D.F.O., Durg, that on account of lapse of ten years it is not possible to verify the vouchers which were objected by Mr. K.K. Dubey, S.D.O. (Forest), but vide letter dated 30th July, 2002, the petitioner was informed that it has been decided to conduct a departmental enquiry against him which was communicated to him vide Annexure P-9.

4. The charges of imputation, list of witnesses & documents and statement of allegations were communicated to the petitioner to which he submitted his reply Annexure P-15. Respondent No.6 after verifying the facts sent his comments to respondent No.3 vide letter dated 07.12.2002. Respondent No.6 mentioned that the vouchers mentioned in the charge sheet does not relate to the Bamboo Plantation Area, Jagtara. He further mentioned that the vouchers, which have been objected to and in relation to which the charge sheet has been given to the petitioner, are also related to the works for which payments were made by Assistant Rangers Mr. P.R. Nagwanshi & Mr. J.P. Thakur. On receipt of the reply and comments (Annexure P-15A) and on coming to know about the fact, the petitioner made an application on 30.12.2002 to respondent No.3 for quashing the enquiry. But respondent No.5 was hell-bent to deprive the petitioner of the legitimate benefit to which he was entitled. Respondent No.3 issued another charge sheet with mala fide intention on 28.01.2003 and a fifteen year's old matter was made the subject matter of the enquiry, whereas, the directions of the General Administration Department of the State of Madhya Pradesh were flouted in which it was categorically mentioned that the enquiry should be completed at the earliest. In the meantime, Departmental Promotion Committee of the Central Government for the selection of officers of the State Government (Assistant Conservator of Forests – Senior/Selection Grade) for IFS was

held on 9/10.12.2002. Four posts as on 01.01.2000 and six posts as on 01.01.2001 were to be filled up in the I.F.S. cadre. The petitioner's position was at number 4 and he was also selected, but as the departmental enquiry was pending against him, therefore, his name was not notified for IFS. The respondents had not granted Selection Grade to the petitioner on the pretext that offence against the petitioner is registered at Police Station: Katghora and kept the grant of Selection Grade in abeyance which was contrary to the circular dated 07.11.1994 issued by the General Administration Department. Since no charge sheet was filed against the petitioner and merely on the basis of registering a criminal case, the respondents were not entitled to withhold the promotion of the petitioner in the Selection Grade. In Crime No.158/2004, registered at Police Station: Katghora, so far no charge sheet has been filed against the petitioner.

5. Further case of the petitioner is that after completing the enquiry, the Enquiry Officer submitted his findings on 19.03.2003 (Annexure P-32A) exonerating the petitioner of all the charges. However, respondent No.3 disagreed with the report of the Enquiry Officer and issued show cause notice to the petitioner to which the petitioner replied. Respondent No.3 while disagreeing with the report of the Enquiry Officer imposed the above penalty simply believing the statement of Mr. K.K. Dubey, the then S.D.O. (Forest), Durg, including the statements of six defence witnesses. No labourer or other persons who made the payments were examined by the Enquiry Officer and Mr. K.K. Dubey's enquiry was ex-parte, he never inspected the site nor he obtained signatures of the witnesses while making preliminary enquiry. So, merely on the basis of the statement of Mr. K.K. Dubey, respondent No.3 has illegally held the petitioner guilty. Respondent No.3 disagreed with the report of the Enquiry Officer contrary to the principles laid down by the Hon'ble Apex Court in its various decisions. The inferences of respondent No.3 are based on the statements of S.D.O. Mr. K.K. Dubey, as the main witnesses who were examined during the preliminary enquiry were not examined in the departmental enquiry and the petitioner had no chance to cross-examine these witnesses, as such, based on the statement of Mr. K.K. Dubey, respondent No.3 has wrongly based its finding and held the petitioner guilty of misconduct. The finding of respondent No.3 is recorded with malice. It has further been mentioned that the departmental enquiry initiated by respondent No.3 is illegal, unjust,

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without jurisdiction, motivated and malafide on totally false and baseless grounds.

6. Return has been filed on behalf of respondents 2 & 3 in which it has been mentioned that the departmental enquiry was initiated as warranted under the law and the State Government had taken the decision to hold departmental enquiry against the petitioner. The Enquiry Officer had submitted his report before the disciplinary authority and the disciplinary authority while disagreeing with the report, issued show cause notice indicating its reasons for disagreement and directed the petitioner to submit his reply to the said show cause notice. The petitioner filed reply to the show cause notice. Therefore, it cannot be said that the decision of the State Government to hold and thereafter, to initiate the departmental enquiry is mala fide and not based on the material available on record. The departmental enquiry was conducted on certain facts based on documents and material available on record, as such it cannot be said to be illegal. The petitioner is not entitled for any damages. The scope of judicial review to quash the departmental enquiry instituted by the Government vested in it by law is extremely limited and does not extend beyond a limited scrutiny as to whether the power to hold departmental enquiry has been initiated by the competent authority under the relevant rules and whether the delinquent employee is being given proper and reasonable opportunity of being heard under the relevant service rules or not. Under the writ jurisdiction, the Court cannot sit as an appellate Court and the decision to initiate enquiry against the petitioner was taken in accordance with law. Therefore, the petition be dismissed.

7. Additional return has been filed on behalf of respondents 2 & 3. It is stated that the Disciplinary Authority i.e. the Principal Chief Conservator of Forests, gave an opportunity of personal hearing to the delinquent employee and after a detailed examination of the facts passed the order dated 08.05.2003. The action of the competent authority is not mala fide and the petitioner was given opportunity. As far as the jurisdiction of the disciplinary authority is concerned, it is submitted that the petitioner has raised this ground for the first time in the amendment application and the petitioner is an Officer of Class-II, therefore, in view of the circular of the State Government dated 12th September, 1983, the Head Office was fully competent to award minor penalty under the provisions of the Rules.

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8. Rejoinder to the additional return filed by respondents 2 & 3 has been filed by the petitioner in which it is stated that respondents 2 & 3 have no jurisdiction to withhold the Selection Grade of the petitioner.

9. I have heard Mr. K.A. Ansari, counsel for the petitioner; Mr. Vinay Harit, Senior Central Govt. Standing Counsel for Union of India/respondent No.1; Mr. Shashank Dubey, Deputy Advocate General for the State/respondents 2 & 3; and Mr. Abhishek Sinha, counsel for respondents 4 & 5.

10. Learned counsel for the respondents argued that the petitioner has a statutory right to file appeal against the order of the disciplinary authority dated 08.05.2003 against which in fact the petitioner has already filed appeal which is pending consideration of the State Government, therefore, this writ petition does not lie. It is true that the appeal has been filed by the petitioner as back as on 30th May, 2003. When the counsel for the petitioner raised objection that the appeal of the petitioner is not being decided by the respondent Secretary, the Court directed that the Secretary should decide the appeal as early as possible, as the case of the petitioner for promotion in the Indian Forest Service was ripe since 2000, and he is not being considered on account of the pendency of enquiry. On 20th February, 2004, the Deputy Advocate General submitted that he had contacted the concerned Officer and informed him about the Court's order then he informed him that the personal hearing has already been concluded, and the matter is required to be sent to the Government level, therefore, three weeks' time be allowed to decide the appeal. Accordingly, time was allowed. Again on 15.03.2004, the Deputy Advocate General sought two weeks time to decide the appeal and that time was also allowed. On 31st March, 2004, Mr. Shashank Dubey, Deputy Advocate General submitted that the appeal has not been decided so far, therefore the matter may be taken up for final hearing. Then the arguments of the counsel for the petitioner were heard on 07.04.2004 and thereafter, the arguments of the counsel for the respondents were heard. In the circumstances, when the enquiry was already delayed by 16 years, now the appeal of the petitioner is pending since May, 2003, and that is not being decided even after lapse of ten months. Therefore, the writ petition cannot be allowed to be dismissed only on this ground as the career of the petitioner is at a crucial stage and he cannot be allowed to be suffered at the hands of the respondents for indefinite period. Moreover, it is settled law that the rule of alternative remedy is rule of discretion and not a rule of law, when on the

face of record it is apparent that the principles of natural justice are violated while passing the impugned order, then the question of alternative remedy becomes irrelevant and that cannot be considered as bar against entertaining of the writ petition. Therefore, the objection raised by the counsel for the respondents is rejected.

11. Mr. K.A. Ansari, counsel for the petitioner argued that respondent No.3, the Principal Chief Conservator of Forests, was not the disciplinary authority for the petitioner and he was not competent to initiate enquiry against the petitioner because, the petitioner is a senior scale Assistant Conservator of Forests and therefore, he is a Class-I Officer as per the notification dated 24.08.1999 issued by the Governor of Madhya Pradesh under Article 309 of the Constitution of India. Therefore, enquiry initiated by respondent No.3 against the petitioner was without jurisdiction, and accordingly, he could not have imposed penalty against the petitioner.

12. On the other hand, learned counsel appearing on behalf of respondents 2 & 3 and respondents 4 & 5 argued that as per the schedule attached with the Rules, at page No.484, Assistant Conservator of Forests has been categorized as Class-II Officer and in this schedule no amendment has been effected. As per the Government order dated 21st August, 1984, the powers to initiate enquiry and impose minor penalties against Class-II Officers were delegated to the Head of the Department and since the Principal Chief Conservator of Forests is the Head of the Department, as such as per this Government order, as the petitioner is a Class-II Officer, respondent No.3 was competent to initiate enquiry and impose minor penalty against the petitioner.

13. I have perused the order dated 24.08.1999 which was issued by His Excellency the Governor of Madhya Pradesh under Article 309 of the Constitution of India, in which the post of Assistant Conservator of Forests was further classified in three categories viz., Junior, Senior and Selection grade. The officer carrying Junior grade was categorized as Class-II Officer and the officer (Assistant Conservator of Forests) carrying Senior grade and Selection grade were classified as Class-I Officers. This notification was issued further classifying Rule 5 of the Madhya Pradesh State Forest Service (Recruitment) Rules, 1977. Rule 2 (h) of the above said Rules, defines "Service" means the Madhya Pradesh State Forest Service. Rule 3 deals with Scope and Application, which says, "Without prejudice to the

generality of the provisions contained in the Madhya Pradesh Civil Service (General Conditions of Service) Rules, 1961, these rules shall apply to every member of the Service". Rule 5 deals with Classification, Scale of Pay, etc., which says, "The classification of service, the scale of pay attached thereto and the number of posts included in the Service shall be in accordance with the provisions contained in Schedule I hereto annexed: Provided that Government may from time to time add to or reduce the number of posts included in the Service either on a permanent or temporary basis." Therefore, it is clear that the said notification dated 24.08.1999 was issued by the Governor of Madhya Pradesh under Article 309 of the Constitution of India further classifying the pay scale of the Assistant Conservator of Forests, whereas, the Madhya Pradesh Civil Service (Classification, Control and Appeal) Rules, 1966, were framed under Article 311 of the Constitution of India for the purpose of enquiry to be conducted against the Government employees. Article 311 of the Constitution of India deals with dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State. Rule 4 Part-II of the Rules, classifies the State services into four categories and as per the schedule attached with these Rules, the post of Assistant Conservator of Forests had been classified as Class-II and this schedule had never been amended by the State Government under the Governor's order under Article 311 of the Constitution of India. Therefore, the argument of the learned counsel for the petitioner is devoid of merit and the same is misconceived. As per the order dated 21st August, 1984, the State Government had authorized all the Head of the Departments to initiate enquiry and impose minor penalties on Class-II Officers. In the circumstances, respondent No.3 was very much competent to initiate enquiry and impose minor penalty on the petitioner.

14. Now, coming to the question of maintainability of the writ petition against the impugned order of respondent No.3, whereby respondent No.3 has imposed minor penalty against the petitioner for recovery of the amount which was based on false and forged vouchers and also imposed the penalty of withholding of one increment without cumulative effect, learned counsel for the petitioner argued that the Enquiry Officer after conducting enquiry held that charges against the petitioner are not proved and accordingly, he exonerated the petitioner from the charges. However, respondent No.3, the disciplinary authority, disagreed with the finding of the Enquiry Officer and imposed penalty as mentioned above. Learned

counsel for the petitioner further argued that the finding of the disciplinary authority is perverse as the same is based on no evidence and the conclusion arrived by respondent No.3 is simply based on surmises and conjectures. He further argued that the labourers in whose name the forged vouchers were alleged to be prepared were not examined by the Enquiry Officer, nor the statements recorded by Mr. K.K. Dubey in his preliminary enquiry were placed before the Enquiry Officer. Even when Mr. K.K. Dubey examined those labourers, he had not obtained their signatures on the statements, nor he read over those statements to them, nor Mr. K.K. Dubey was personally knowing those labourers. Therefore, there was virtually no evidence against the petitioner, upon which the charge said to have been proved against the petitioner. He further argued that even two labourers were produced by the petitioner in his defence and they have stated that they received the payments. The Officer's defence witnesses who actually made the payment and prepared the record had specifically stated that they made the payment and based on that the record was prepared. Even the Officer, who took charge from the petitioner, has stated that he inspected the site and found that all the works were carried out and were in good condition. Therefore, in view of the above evidence, the finding of the disciplinary authority is perverse.

15. On the other hand, learned counsel for respondents 2 & 3 argued that Mr. K.K. Dubey was examined by the Enquiry Officer and he has stated that the report made by him to the District Forest Officer may be treated as his evidence. Based on that report, the charge was proved against the petitioner and in the matter of departmental enquiries strict rule of evidence does not apply and finding in the enquiry can be based on the probability of the evidence. This Court under Article 226 of the Constitution of India cannot look into the sufficiency of evidence to prove the charge. Therefore, he argued that there is no substance in the argument of the counsel for the petitioner.

16. In this connection, if we look into the judgment of Hon'ble the Apex Court in the matter of **U.P. State Road Transport Corpn. and others vs. Mahesh Kumar Mishra and others** reported in **(2000) 3 S.C.C. 450**, it is held that

> "Sufficient evidence though available, not collected and the misconduct not a serious one – Interference by High Court on quantum of punishment, if, on facts, justified – Respondent was a confirmed Conductor of U.P. State Road

Transport Corporation – While on duty on a city bus the same was checked by Transport Inspector who allegedly found that a certain number of passengers (11 in this case) travelling from a longer distance, were issued short-distance tickets, the deficiency in fare amounting to 30 paise per head – In the domestic enquiry conducted under the relevant regulations none of the passengers examined to ascertain where he had boarded the bus from – Nor had the Transport Inspector recorded the statements of the passengers – The only evidence in support of the charge was the Transport Inspector's report which bore the signature of the respondent as well – Respondent contending that he had issued tickets only from the place of boarding of the passengers – In such circumstances, held, High Court could rightly have found the punishment of dismissal to be shockingly disproportionate."

17. In the matter of **Bank of India and another vs. Degala Suryanarayana** reported in V **(1999) SLT 529**, Hon'ble the Apex Court held that

"The Disciplinary Authority on receiving the report of the Enquiry Officer may or may not agree with the findings recorded by the latter. In case of disagreement, the Disciplinary Authority has to record the reasons for disagreement and then to record his own findings if the evidence available on record be sufficient for such exercise or else to remit the case to the Enquiry Officer for further enquiry and report."

The Court further held that

"Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilty even in departmental enquiry proceedings. The Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The Court cannot embark upon re-appreciating the evidence or weighing the same like an Appellate Authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. In *Union of India v. H.C. Goel*, 1964 (4) SCR 718 the Constitution Bench has held:

"The High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is

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> accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not.""

18. Again in the matter of **Kuldeep Singh vs. Commissioner of Police and others** reported in **I (1999) SLT 10**, the Hon'ble Apex Court held that

> "No Reasonable Opportunity Against Principles of Natural Justice – Allegation of payment given to appellant not proved in any manner – None of three recipients of said amount, who were complainants, produced at departmental enquiry – Procedure to be followed for holding departmental enquiry – Non-production of complainants sought to be justified with reference to Rule 16 (3) – Blame for non-production of two witnesses laid on appellant already under suspension – Absence of original complaint indicates in fact no complaint in existence – Further supports statement of department's own witness that no payment was made by her to appellant – Reasonable opportunity contemplated by Article 311 (2) means "Hearing" in accordance with principles of natural justice – Basic requirement – All witnesses in departmental enquiry examined in presence of delinquent who shall be given opportunity to cross-examine them – Absolutely no evidence in support of charge framed against appellant – Entire findings recorded by Enquiry Officer vitiated being not supported by any evidence on record and wholly perverse."

In para 5 of the judgment, it was held that "the previous joint statement of the complainants was brought on record without examining any of them". Further in para 8 of the judgment, it was held in the matters of *Central Bank of India v. Prakash Chand Jain*, 1969 (2) LLJ 377 (SC)=AIR 1969 SC 983 and *Rajinder Kumar Kindra v. Delhi Administration through Secretary (Labour) and others*, AIR 1984 SC 1805=1985 (1) SCR 866=(1984) 4 SCC 635, that "where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be ejected as perverse".

It was further held that

> "If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."

It was further held that

> "Reasonable opportunity contemplated by Article 311 (2) means "Hearing" in accordance with the principles of natural justice under which one of the basic requirements is that all the witnesses in the departmental enquiry shall be examined in the presence of the delinquent who shall be given an opportunity to cross-examine them. Where a statement previously made by a witness, either during the course of preliminary enquiry or investigation, is proposed to be brought on record in the departmental proceedings, the law as laid down by this Court is that a copy of the statement should first be supplied to the delinquent, who should thereafter be given an opportunity to cross-examine that witness."

Similar view was taken by the Hon'ble Apex Court in the matter of **Yoginath D. Bagde vs. State of Maharashtra and another** reported in **X (1999) SLT 276**.

In the matter of **Indian Oil Corporation Ltd. and another vs. Ashok Kumar Arora** reported in **(1997) 3 SCC 72**, the Hon'ble Supreme Court of India held that

> "In cases of departmental enquiries and the findings recorded therein, the High Court does not exercise the powers of appellate court/authority. The jurisdiction of the High Court in such cases is very limited for instance where it is found that the domestic enquiry is vitiated because of non-observance of principles of natural justice, denial of reasonable opportunity; findings are based on no evidence, or the punishment is totally disproportionate to the proved misconduct of an employee."

In the matter of **State Bank of Patiala and others vs. S.K. Sharma** reported in **AIR 1996 SC 1669**, the Hon'ble Apex Court held that

> "In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/ employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment."

19. In the light of the above law laid down by the Hon'ble Apex Court, if we look into the facts of the present case, in the first instance, Mr. K.K. Dubey, the then S.D.O. (Forest), Durg, after checking the vouchers and examining the labourers, prepared report Annexure P-4, in which he categorized certain vouchers as bogus. As per the report, he inspected compartment No.26 on 28.06.1987 and mentioned that till the said date, the works of cutting, pit digging and staking has been done in the Jagtara Bamboo Plantation Area by the labourers and the vouchers were prepared in the name of unknown persons by giving false numbers viz., B-288, B-342, B-343 & B-347 in the month of March, 1987. He recommended that these vouchers be disallowed finally. He further mentioned that the work pertaining to two vouchers B-2 & B-3 was done by the P.W.D. previously, so it is expected from the Range Officer to justify the reconstruction. It is mentioned in clauses 3, 4, 5, 6 & 7 that the statements of labourers were recorded by him and found that no disbursement of any type was made to them by Mr. J.P. Thakur, Range Officer, Gurur. But, neither those statements recorded by Mr. K.K. Dubey were produced before the Enquiry Officer nor those labourers were examined by the Enquiry Officer, nor it was ascertained whether any payment was made to them or not. Therefore, the petitioner could not get any opportunity to cross-examine those witnesses. Hence, the principle of natural justice has been violated. Even Mr. K.K. Dubey in his cross-examination before the Enquiry Officer admitted that he had not obtained the signatures of the labourers on their statements and even he was not knowing those labourers personally. In the last question asked by the delinquent to Mr. K.K. Dubey, he stated that he only enquired about the less payment made to the labourers. He has further stated that on checking of accounts he raised objections on vouchers. He has nowhere stated that he went to the site and no work was executed. He has simply stated that he enquired about the fact that less payment was made to the labourers and those labourers were not produced by the Department before the Enquiry Officer. Even he has not stated in his statement that any less payment was made to the labourers. He has simply stated that his enquiry report may be taken on record as it is, whereas, he ought to have stated what kind of inspection was made by him in order to prove the charge against the petitioner, so that the petitioner could have cross-examined the witnesses on these points. Even he has stated that he was not knowing those labourers personally of whom he recorded the statements.

20. The charge was levelled against the petitioner vide order dated 28.01.2003 that in the month of June, 1987, under Rural Landless Employment Guarantee Programme, under general head, forged vouchers were prepared in the name of unknown persons regarding plantation in the areas of East Rajarao Pathar, Kaparmeta, Khairdigee, Kariyatola, Nahda and Kosmi in Jagtara in respect of works of cutting, staking, digging of pit and construction of C.P.T. Even Department Witness No.2 Mr. M.C. Atri, Forest Officer, has stated before the Enquiry Officer that he personally visited areas of East Rajarao Pathar, Kariyatola, Nahda etc., and found that bamboo plantation and fencing for protection from cattle were in good condition. Mr. J.P. Thakur, the Department Witness has also stated that he prepared vouchers after making payment to the labourers and the signatures of the labourers were obtained on the muster roll, thereafter, the payment was made. He further stated that when Mr. K.K. Dubey recorded the statement of witnesses, no department person was present. Naseer Mohd. Qureshi, Forester, has also stated that the attendance was recorded in the muster roll by him and after verifying the work at the place, Mr. J.P. Thakur made payment. Defence Witness Mr. A. Ekka, Sub Divisional Officer, Sukma, has stated that he inspected the site and after verifying the same, he made oral report to the Forest Officer. Mr. Chanderam has also stated that during the tenure of Mr. J.P. Thakur and Mr. Neel Kanth Sahu, forest work was executed and payment was made to him. Similarly, other labourers Panku & Ramlal have also stated that payments were made to them. Mr. V.K. Sindoor (witness No.7), Project Officer, Gurur, has also stated that in the year 1987, the plantation was done. The Enquiry Officer further recorded in his finding that Mr. K.K. Dubey inspected compartment No.26 on 26.06.1987, whereas, the account of R.L.E.G.P. was closed on 28.06.1987, therefore, the previous inspection was bad. If we look into the statements of defence witnesses, these witnesses were not even cross-examined by departmental nominee or Enquiry Officer in order to ascertain the veracity of their statements. Therefore, there was no basis before the Disciplinary Authority to disbelieve the statements of these witnesses on surmises and conjectures and record his dissenting finding holding the petitioner guilty. In the circumstances, virtually, no evidence was produced by the Department in order to prove the charge against the delinquent. On the contrary, the evidence produced by the delinquent to certain extent shows that work was executed and payments were made.

21. In this connection, it is also worthwhile to mention that when the report was submitted by Mr. K.K. Dubey, Sub Divisional Officer, to the D.F.O., Durg, in 1987, in the year 1989 that report was sent by the D.F.O. considering the same as ex-parte and incomplete to Mr. M.C. Atri, S.D.O. for enquiry. But he returned that report stating that it should be conducted by some senior officer. Thereafter, the Department went into long sleep and nobody cared to get the enquiry conducted on the spot so as to find whether the vouchers were bogus ones and whether the work was in fact executed or not. All of a sudden in the year 1997, the D.F.O. passed an order that since ten years has elapsed, therefore, it is not possible to conduct enquiry and passed the order of recovery of the amount of those vouchers and food grains shown to be distributed which was challenged by the petitioner before the State Administrative Tribunal. The State Administrative Tribunal set aside the same vide order dated 19.04.2000 and held that since before passing the recovery order no enquiry has been held in consonance with the rules and the recoveries were not based on the enquiry conducted, the recoveries were quashed. However, the Tribunal further observed that if the administrative exigency exists, the Department is at liberty to hold enquiry against the petitioner. Again for more than one and half years nothing was done and in the year 2002, charge sheet was issued to the petitioner and the comments of the petitioner and respondent No.6 were called for. When respondent No.6 pointed out certain lacunae then again, the charge sheet was amended and fresh charge sheet was issued on 28.01.2003. Even though the findings of the Enquiry Officer exonerating the petitioner on the ground that charge has not been proved was based on sound reasonings, but the Disciplinary Authority recorded its disagreement on surmises and conjectures and not based on legal evidence as discussed above. The Disciplinary Authority disbelieved the defence witnesses without valid reasons. He even disbelieved those officers of the Department without any basis who had stated that they inspected the site and work was found satisfactory. Even the statement of S.D.O. Mr. M.C. Atri, who took over charge and inspected the site, was not believed. The Disciplinary Authority simply based his findings on the report and statement of Mr. K.K. Dubey, which cannot be made basis of holding the petitioner guilty of the charge for the reasons mentioned in paras 19 & 20 of this order. Findings, which the Disciplinary Authority arrived at, no reasonable man could come to this finding based on the evidence, which was before the Enquiry Officer.

22. Therefore, in view of the above, the findings of the Disciplinary Authority are perverse as the same is based on no evidence. No witnesses or labourers were examined in whose name the bogus vouchers were said to have been prepared. Rather the petitioner had examined two persons who had stated that payments were received by them. Therefore, the petitioner had no opportunity to cross-examine those labourers/witnesses and the principles of natural justice have been violated in this case, as has been held by the Hon'ble Apex Court in the matter of **Kuldeep Singh** (***supra***).

23. In the matter of **Kasoram Cotton Mills Ltd. vs. Gangadhar** reported in **1964 (2) SCR 809=AIR 1964 SC 708**, the Hon'ble Supreme Court has held that

> "if a previous statement of the witness was intended to be brought on record, it could be done provided the witness was offered for cross-examination by the delinquent".

But in this case, neither the previous statement of the labourers were produced by the Enquiry Officer nor those witnesses were examined in order to prove the charge against the petitioner that bogus vouchers were prepared in the name of unknown persons without making any payment. Mr. K.K. Dubey, in his cross-examination had categorically admitted that he enquired in regard to making less payment to the labourers. He has not stated that he personally inspected the site and found that no work was done at the site, nor he has stated that he made enquiry regarding non-execution of work at the site. After submission of report by Mr. K.K. Dubey, no person was deputed to ascertain the veracity of the report about the vouchers as to whether any work was executed on the site or not. Therefore, since the finding of the Disciplinary Authority is based on no evidence, rather it is based on surmises and conjectures and in view of the laws laid down by the Hon'ble Apex Court in the above cited judgments, this Court can exercise the power of judicial review and set aside the order passed by the Disciplinary Authority being perverse.

24. The other point argued by the counsel for the petitioner is that the Department ought not to have initiated departmental enquiry after 15 years, hence, on the ground of delay the enquiry can be quashed. But, I do not find any substance in this argument. After the report was submitted by Mr. K.K. Dubey, the explanation of Mr. J.P. Thakur was sought for and thereafter, the explanation of the petitioner was also sought in the year 1994 and they delayed in giving reply, therefore, in the year 1997, the

amount of those vouchers were ordered to be recovered 60% from the petitioner and 40% from Mr. J.P. Thakur. This point was argued by the counsel for the petitioner before the State Administrative Tribunal and the recovery of amount was set aside by the State Administrative Tribunal and permitted the Department that if any administrative exigency exists, then enquiry can be conducted and on that basis enquiry was started.

25. Now, coming to the question of grant of Selection grade to the petitioner, as per the petition of the petitioner, he was entitled for Selection grade since 2002, but on account of registration of some criminal case against him at Police Station: Katghora, the Selection grade was not granted to him, but till today, no charge sheet has been filed against him. Therefore, merely on the basis of registration of a criminal case against the petitioner, unless charge sheet is filed, his Selection grade cannot be withheld, as per the guidelines issued by the General Administration Department (Annexure P-18). Through Annexure P-18 dated 07.11.1994 it was directed that if any charge sheet has been filed against a public servant on the basis of criminal charge then the matter can be kept pending. In reply to this, respondents 2 & 3 in para 3.28 of their return mentioned that Criminal Case No.158/2001 was registered against the petitioner along with three other Officers in which the petitioner obtained bail order under Section 438 of the Cr.P.C. and the representation made by the petitioner on 11.06.2002 is under consideration as per the law and existing rules. No where it has been mentioned that on account of registration of the case, the petitioner is not entitled for Selection grade. In the matter of **Union of India, etc. etc., vs. K.V. Jankiraman, etc. etc.,** reported in **AIR 1991 Supreme Court 2010**, in para 6 of its judgment, the Hon'ble Apex Court held that sealed cover procedure can be adopted only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. Promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/ charge sheet has already been issued to the employee.

26. Since no charge sheet has been issued/filed against the petitioner in Crime No.158/2001, therefore, the respondents are not within their right to

withhold the Selection grade only on that count. Registration of this case cannot be considered as bar for grant of Selection grade.

27. No other points were argued and pressed by the counsel for the petitioner and no specific allegations or mala fide or harassment were raised or proved against respondents 3, 4 & 5. Therefore, the petitioner is not entitled for any compensation from respondents 3, 4 & 5.

28. In the result, the petition of the petitioner is partly allowed. Order dated 08.05.2003 of the Disciplinary Authority withholding one increment without cumulative effect and for recovery of 60% amount of Rs.1,90,458-35 ps. i.e. Rs.1,14,275/- is quashed and respondents 2 & 3 are directed to consider the case of the petitioner for grant of Selection grade in accordance with law. The matter is lingering on since 1987, thereby about 17 years time has elapsed and even then the Department has not been able to prove the charge against the petitioner, therefore, it is expected that now, the Department will think to give the matter finality.

Sd/-
L.C. Bhadoo
Judge

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